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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,701	10/15/2004	Teruhiko Suzuki	260020US6PCT	9481

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EXAMINER
PE, GEEPY

ART UNIT	PAPER NUMBER
2621	

NOTIFICATION DATE	DELIVERY MODE
09/01/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/510,701	SUZUKI, TERUHIKO	
	Examiner	Art Unit	
	Geepy Pe	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,6,7,9,15 and 16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,6,7,9,15 and 16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 June 2009* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/13/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/12/09, with respect to claims 1, 6, 7, 9, 15, and 16, have been fully considered but they are not persuasive.

2. Claims 1, 6, 7, 9, 15, and 16 remain rejected under 35 U.S.C. 102(e) as being anticipated by Tahara et al. (U.S. Pat. 6,671,323; hereinafter Tahara), as was set forth in the Office Action of 12/12/08.

3. The Applicant presents one substantive argument(s) contending the Examiner's rejections of claims 1, 6, 7, 9, 15, and 16 under 35 U.S.C. 102(e) as being anticipated by Tahara, as was set forth in the Office Action of 12/12/08. However, after carefully reviewing the argument(s) presented and further scrutiny of the applied reference, the Examiner must respectfully disagree and maintain the grounds of rejection for the reasons that follow. A more detailed rejection, addressing the newly amended claims also follows.

With regards to the pending rejections of claims 1, 6, 7, 9, 15, and 16, the Applicants argue that Tahara does not teach "…both a minimum bit rand and a minimum buffer size…" (Remarks of 6/12/09: pg. 10, lines 10-16). The Examiner respectfully disagrees. In particular, Tahara teaches a virtual buffer (VBV) (Tahara: col. 13, line 52 - col. 14, line 24) which all teaches a minimum bit rate and minimum buffer size. Furthermore, as in Fig. 11, the bit rate value is described, and in Fig. 23, the VBV is described. That is, a minimum bit rate and minimum buffer size are described, as required by claim 1. Accordingly, the Examiner respectfully maintains the grounds of rejection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 6, 7, 9, 15, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Merely for the purpose of clarification, since the buffer described in the instant claims, may both be used for encoding or decoding, it would be appreciated that the buffer be designated if it is used in the encoding or decoding process, e.g., encoder buffer, decoder buffer, etc.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7 and 16 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A) The computer program as claimed is not properly associated with the operation. It is quite possible that the computer program may be an unrelated sub-routine or a simple commence instruction which then causes the computer to execute the operation that could be self-resident, and not encoded on the medium, *Interim Guidelines, Annex IV (Section b)*.

That is, "storing" is still insufficient. Embedding or similar nomenclature, will suffice.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims **1, 6, 7, 9, 15, and 16** are rejected under 35 U.S.C. 102(e) as being anticipated by Tahara et al. (U.S. Pat. 6,671,323; hereinafter Tahara; already of record).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Re. **claim 1**, Tahara teaches an encoding device (Tahara: col. 1, lines 7-8) including: generating means for generating a header to which reference is made as needed during decoding (Tahara: col. 8, line 12; Figs. 11, 22, 23, 26, 28C & 29: i.e., headers are generated for use in the MPEG stream); encoding means for encoding the header generated by the generating means and an input image signal, respectively (Tahara: col. 1, lines 7-8; Figs. 1 & 2, element 2; Fig. 4; Fig. 28C); and outputting means for multiplexing the header and the image signal encoded by the encoding means and outputting a bitstream, wherein the generating means generates the header containing buffer characteristic information about buffering during decoding of the bitstream, and the buffer characteristic information contains all of a minimum bit rate R_{min}, a minimum buffer size B_{min}, and a minimum delay amount F_{min} which are decodable during decoding of the bitstream (Tahara: Fig. 4; col. 6, lines 28-43; Fig. 11; col. 14, lines 5-8; Figs. 11 & 23; col. 13, line 52 - col. 14, line 24).

Re. **claims 6, 7, 9, 15, and 16**, the claim(s) recite analogous limitations to claim(s) 1 above, and is/are therefore rejected on the same premise.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geepy Pe whose telephone number is (571)-270-3703. The examiner can normally be reached on Monday - Friday, 7:00AM - 3:30PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on 571-272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. P./
/Geepy Pe/
Examiner, Art Unit 2621

/Andy S. Rao/

Primary Examiner, Art Unit 2621
August 27, 2009